**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**APPELLATE JURISDICTION**

**CRIMINAL SUOMOTTO CONTEMPT PETITION NO. 6 OF 2005**
**IN**
**WRIT PETITION NO.9774 OF 2004**

High Court on its own Motion ...Petitioner
Vs.
Mr. P.B. Gavli, Sr. Clerk &
Mr. Suresh Sawant, Jr. Clerk ...Respondents

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Mr.C.J.Sawant Senior Advocate with Mr. Rajesh Datar for Respondent No.1
Mr.H.E.Palwe for Respondent No.2

**CORAM: H.L.GOKHALE &**
**S.P.KUKDAY,JJ.**
**DATED: 15TH JUNE, 2005**

**P.C.**

1. A Division Bench by its order dated 28th April, 2005 directed that an action for contempt be taken against the two contemnors herein. The circumstances leading to the order were that the two contemnors (who are employees in the office of the Additional Government Pleader in the High Court) are stated to have made a false representation to the Court. One of the two contemnors Shri P.B. Gavli is Senior Clerk and the other Shri Suresh Sawant is a Junior Clerk. Shri Suresh Sawant was supposed to file a Government affidavit in reply after serving the same on the Advocate for the Petitioner in Writ Petition No.9774 of 2004. The matter was to come up on a particular date and as per the practice the affidavit could be filed in the Office of the High Court by 4.00

p.m. on the previous day, provided a copy of the same was served on the Advocate for Petitioner. Shri Sawant made an endorsement on the Court papers that a copy of the affidavit has been served on the Advocate concerned. The affidavit was handed over to another employee for service and Shri Sawant has stated in an affidavit filed in reply to this Contempt Notice that he made that endorsement on the instructions of Shri Gavli, Senior Clerk. Shri Gavli, Senior Clerk has filed an affidavit stating that he had not instructed Shri Sawant to make any such endorsement without service. In any case it appears that the concerned Clerk Shri Sawant expected the affidavit to be served on the Advocate appearing for the Petitioner in time and made that endorsement in good faith and in anticipation of the service to be effected. Unfortunately it could not be served and therefore, the Division Bench which heard the matter on 28th April, 2005 formed an opinion that a misrepresentation was made to the Court and that is how the notice for contempt has been issued.

2. Both the Contemnors are present. They have filed their affidavits explaining the circumstances wherein the particular endorsement came to be made. It appears that since the Advocate appearing for the Petitioner was staying far off, the affidavit could not be served. There was no intention to mislead the Court. Both the contemnors have tendered

unconditional apology for any act of contempt that may have been committed though unintentionally.

3. In view of the circumstances stated above and in view of the affidavits filed by both the contemnors we do not think that there is any reason to proceed with the Contempt Notice any further. The Contempt Notice is discharged, and the Petition will stand dropped.

4. Though the Contempt Notice is discharged we expect the Office of the Additional Government Pleader (Writs) to be careful in future so that such situations are not repeated in future.

**(H.L.GOKHALE,J.)**

**(S.P.KUKDAY,J.)**